

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2008-051443

06/09/2011

HON. CAREY SNYDER HYATT

CLERK OF THE COURT

C. Brown

Deputy

IN RE THE MARRIAGE OF  
ANN MARIE SEWELL-SIMS

DOUGLAS G PARKER

AND

GREGORY M SIMS

GREGORY M SIMS  
4615 N 22ND ST # 203  
PHOENIX AZ 85016

JUDGE VIOLA

ORDER

This Court is in receipt of a Notice of Change of Current Judge, filed by Respondent on June 2, 2011, which has just recently been received by this division for disposition in accordance with A.R.S. § 12-409(A).

Pursuant to Rule 42(f)(2)(D), if a party makes proper service of an affidavit that meets the requirements of A.R.S. § 12-409(A) seeking to change the assigned judge for cause, the matter must be heard by another judge and the issue decided by a preponderance of the evidence. However, before the court sets this matter for an evidentiary hearing to resolve disputed issues on the alleged bias, prejudice, or interest of the assigned judge, the court must first determine whether or not the affidavit as a matter of law states grounds that, if proven, would justify disqualification under A.R.S. § 12-409. *See, e.g. Mervyn's v. Superior Court*, 179 Ariz. 359, 361, 879 P.2d 367, 369 (App. 1994).

In *Smith v. Smith*, 115 Ariz. 299, 564 P.2d 1266 (App. 1977), the Arizona Court of Appeals recognized that, "the bias and prejudice necessary to disqualify a judge must arise from an extra-

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judicial source and not from what the judge has done in his participation in the case. *United States v. Grinnel Corp.*, 384 U.S. 563, 86 S.Ct. 1698, 16 L.Ed 2d 778 (1966).” *Id.* At 303.

This Court has reviewed all of the allegations made by Respondent in support of removing the assigned judge, and finds that none of the allegations presented are supported by an affidavit alleging bias, prejudice or interest of the assigned judicial officer arising from an extra-judicial source. The allegations presented involve the judge’s participation in the case, and are insufficient as a matter of law to proceed with an evidentiary hearing on this matter. Accordingly,

IT IS ORDERED denying the Notice of Change of Current Judge, filed by Respondent on June 2, 2011, and reassigning this case to Judge Danielle Viola for all further proceedings.

IT IS FURTHER ORDERED vacating Minute Entry Order dated June 3, 2011, in its entirety.

/s/ HONORABLE CAREY SNYDER HYATT

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HONORABLE CAREY SNYDER HYATT  
JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.